IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9522 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL PARESHKUMAR HIMATLAL

Versus

PATEL PASHABHAI MAGANDAS

Appearance:

MR SV PARMAR for Petitioners

MS SEJAL K MANDAVIA for Respondent No. 1

Mr. Mukesh Patel, Ld.GOVT PLEADER for Respondent No. 7

DS AFF.NOT FILED (R) for Respondent No. 10

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 11/10/2000

CAV JUDGEMENT

1. The petitioners are the members of the Chiloda Seva Sahkari Mandali Limited. The petitioners challenges

the vires and legality & validity of the order passed by the Assistant Registrar of Co-Operative Societies Respondent No.8, by which the Revision Application was allowed by an order dated 31-8-2000 in Revision Application No. GCS/28/2000/142/CHH. The said Cooperative Society held its Annual General Meeting on 25-9-1994, wherein by Resolution No.5 a decision was taken to amend the bye-law No. 34 of the said Society. The Assistant Registrar by his order dated 9-1-1995 approved the proposed amendment of the bye law and in accordance with the provisions of the bye laws, elections were held during 1996-97 to elect members of the Managing Committee. It is further stated that, gross injustice has been caused to the Harijans/landless agricultural labourers and small farmers because of the newly amended bye law. After expiry of the term of the elected members, who were elected in 1996-97 election, new elections were declared to be held on 13-8-2000. The petitioners having felt aggrieved by the amended bye laws filed a suit before the Board of Nominee on 4-8-2000 and also filed another appeal before the Addl. Registrar (Appeals) for staying operation of the newly amended bye law No. 34, which has already come into force. The Addl. Registrar (Appeals) granted stay, against which the respondents filed appeal against the interim order before the State Government. Thereafter the petitioner approached this High Court against the interim order passed by the Government in the Revision Application No. 142 of 2000 and this Court by an order dated 22-8-2000 declined to interfere with the interim order passed by the State Government, and directed the parties to raise their contentions before the State Government. The State Government heard the revision and allowed the same by an order dated 31-8-2000. Having felt aggrieved by the order of the State Government, the petitioner has filed the present petition for quashing the order of the State Government.

2. The respondents have filed counter affidavit, wherein they have stated that the bye law No. 34 was amended in the year 1994, and the same was sanctioned by the Assistant Registrar on 9-1-1995. It is submitted that, after amendment of the bye laws, elections were held in 1996-97 and the petitioners did not object anything about the amended bye laws in that election. It is also stated that, the election was declared to be held on 13-8-2000 and accordingly voters lists have been published in accordance with the bye laws and the same have also been finalised, and the petitioners are filing different cases only to delay the election of the Society. It is further stated that the provisions of the

bye laws are consistent with the provisions of Section 73-B of the Gujarat Cooperative Societies Act, and provisions have been made for representation of all classes of people in the Executive Committee of the Society. It is therefore stated that, no illegality has been made in the bye laws and the bye laws are consistent with the provisions of the Gujarat Cooperative Societies Act and the Rules made thereunder.

3. It is further submitted by Mr. Parmar that, Article 38 (2) of the Constitution of India provides that the State shall in particular strive to minimise ineqalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only among individuals but also among groups of people residing in different areas, or engaged in different vocations. Mr. Parmar accordingly submitted that the bye laws are against the democratic constitution of the Society and therefore they are violative of the Cooperative principles. It is also submitted that, by the aforesaid amended bye law right of vote of the members have been curtailed, in as much as it provides that, different classes of seats will be filled up by different classes of agriculturists. Mr. Parmar accordingly submitted that, a small farmer shall not be entitled to choose a candidate who will be contesting in a seat reserved for big farmer or Scheduled caste or landless member. Mr. Parmar accordingly submitted that the amended bye laws are not in accordance with the provisions of the Gujarat Cooperative Societies Act and the Rules made therein and therefore, they are liable to be quashed. It is further submitted that the State Government did not consider all these aspects and illegally allowed the appeal filed by the respondent.

4. Mr. S.V. Parmar, learned counsel appearing on behalf of the petitioner has further submitted that the landless labourers and Harijans have suffered injustice because of the amendment of the bye-law No. 34. It is submitted by Mr. Parmar that, eventhough the bye-laws are not challenged during election of 1997, there is no legal bar to challenge the vires of the bye laws during the present election in 2000. It is further submitted by Mr. Parmar that Section 73-B of the Gujarat Cooperative Societies Act provides reservation for Harijans, Scheduled caste members, marginal farmers in the Executive Committee. There is no provision for reservation of seats by the big and small farmers. Mr. Parmar further submitted that, by the said amendment of the bye law, apart from 2 seats reserved for Harijans and

landless labourers - one each for said classes of persons; 4 seats have been reserved for big farmers and 5 seats have been reserved for small farmers. It is further submitted that the bye laws provide that there shall be 11 members in the Managing committee and the seat reserved for Harijan will be elected by the votes of Harijans only, landless labourers will elect their member. Similarly small farmers will elect 5 members from amongst them and 4 members will be elected by big farmers from amongst themselves. Mr. Parmar submitted that reservation for big farmers and small farmers cannot be made as Section 73-B of the Gujarat Cooperative Societies Act do not contemplate any such reservation. It is also pointed out by Mr. Parmar that, there are 64 members belonging to big farmers in the Society and for them 4 seats have been reserved. Similarly there are 189 members belonging to small farmers and 5 seats have been reserved for them, as against, 1 seat for 91 Scheduled caste members and 1 seat for 512 landless members. Mr. Parmar consequently submitted that the reservation of seats has not been made in accordance with the representation of different classes of agriculturists and therefore, the bye law is against the provisions of the Resolution and requires to be quashed.

5. Ms. Mandavia, learned counsel appearing on behalf of respondent Society submitted that the petition should be rejected only on the ground of limitation. It is submitted by learned counsel for the respondent that the bye laws were amended in the year 1995 and thereafter elections were held in 1997 in accordance with the provisions of the bye laws, and at that time the petitioner did not raise any objection. It is also submitted by learned counsel that, father of Petitioner No.3 was the President when the Resolution was passed in 1995 and therefore the petitioners cannot say that they were not aware of the amendment. Further when the elections have been held in 1997, at that time no objection was raised by the petitioners, and therefore, they are now debarred from raising any objection regarding illegality or otherwise of the amended bye laws. It is further submitted by learned counsel for the respondent that the present petition itself is not maintainable. It is submitted by learned counsel for the respondent that the bye laws of the Cooperative Society is a contract between the parties, and therefore they cannot be enforced by a writ of this Court. In other words it is not open to this Court to issue a writ to enforce a contractual obligation. In support of her contention she has invited my attention to the decision

of this Court in RAJABHAI RANMAL MORI & ORS v. MEMBERS OF THE MANAGING COMMITTEE OF SHRI UNA TALUKA SAHAKARI KHARID VECHAN SANGH LTD. & ORS, reported in 1976 G.L.R. at page 583. It appears that in the aforesaid case a question was raised about the legality of the bye laws framed by the Society. Relying upon the principles laiddown by the Division Bench of this Court in Special Civil Application No. 1005 of 1965 and 1531 of 1965 decided onApril 24/25, 1972 and also relying upon the principles laiddown by the Apex Court in case of Cooperative Central Bank Limited, held that the bye laws of a Cooperative Society governed by the Gujarat Cooperative Societies Act have their origin in the Contract and therefore, they cannot be enforced by a writ of this Court. In view of the aforesaid decision of this Court, I am of the view that the present petition which has been filed to quash the bye laws of the Chiloda Seva Sahakari Mandali Limited, is not maintainable, and on this ground alone the petition is liable to be rejected.

6. As regards other contentions, Mr. Muksh Patel, learned AGP for State respondent submitted that the amended bye laws cannot be said to be ultra vires to any of the provisions of the Gujarat Cooperative Societies Act or Rules made thereunder. Learned AGP have also submitted that, in fact in the amended by law, provisions have been made for representation of different classes of members in the Cooperative Society. It is also submitted by learned AGP that, such a provision is permissible and this looks after the interest of all classes of persons for being represented in the Executive Committee. Learned counsel also submitted that, in the Gujarat Agricultural Produce Market Act similar provisions have been made for representation of different classes or categories of persons in the Executive Committee. The bye laws that are contemplated by the Gujarat Cooperative Societies Act can easily thus be said that the bye laws govern the internal management, business or administration of the Society. They may be binding between the persons affected by them, but they do not have the force of a Statute. These bye laws constitute a contract between the members of the Society. If the members are aggrieved by the bye laws, then, they may have the remedy in amending the same in the general meeting of the Society. The bye laws of a Cooperative Society is a contract between each member of the Society and if the bye laws are not against the provisions of the Act or the Rules made therein, same cannot be challenged in a writ jurisdiction. Even after examining various provisions of the Gujarat Cooperaive Societies Act, the inescapable conclusion is that the bye laws of a Society

registered under the Act are not statutory in character and have no force of law, and it is a contract between the members of the Society. Therefore, after considering submissions of all the parties, I am of the view that the present petition is not maintainable, and it is also barred by Law of Limitation, and I d not find any illegality in the order passed by the State Government in the Revision Application. Consequently, I am of the view that, there is no merit in the present petition and accordingly it is dismissed. Rule discharged. I make no order as to costs.

DT: 11-10-2000 (P.K. Sarkar, J)

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